

ESTATE OF D. A. MOORE

IBLA 89-645

Decided August 23, 1991

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer, WYW 117086.

Affirmed.

1. Oil and Gas Leases: Lands Subject to

Lands situated within the boundaries of incorporated cities and towns are expressly excluded from leasing by sec. 1 of the Mineral Leasing Act of 1920 and a decision rejecting an offer for such lands is properly affirmed.

APPEARANCES: Beverly J. Moore, Administratrix.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Estate of D. A. Moore has appealed a July 31, 1989, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting noncompetitive oil and gas lease offer WYW 117086. The offer was rejected because the lands described in the offer are within the city limits of Greybull, Wyoming, and, as such, are not available to lease under the relevant regulation.

D. A. Moore filed this offer on July 26, 1989, and died on July 28, 1989. This appeal was filed by Beverly J. Moore as administratrix of D. A. Moore's estate. Appellant's reasons for appeal center on the benefits to be gained from having the lease. Appellant explains that having lease WYW 117086 would be advantageous in developing and operating other leases that the estate already possesses. Appellant also requests issuance of WYW 117086 as a non-access lease stating that there are excellent drill sites available for directional drilling and a non-access lease would permit the land to be pooled or communitized with other land to form a drill site.

The subject of this appeal is a noncompetitive lease offer for 18.87 acres in Big Horn County, Wyoming. BLM noted in its decision that this same acreage was part of parcel WY-8808-621 which was offered in the August 1988 competitive oil and gas lease sale. The BLM decision discloses that parcel WY-8808-621 received a bid in the 1988 sale but it was subsequently discovered that the lands are "within the city limits of Greybull, Wyoming." As a result of that discovery, BLM rejected the competitive lease offer WY-8808-621 for the same reason appellant's noncompetitive lease offer was rejected.

Appellant does not argue that the lands covered by WYW 117086 are not within the incorporated city. Indeed, appellant agrees that "a portion of the requested lands" are within the city limits of Greybull, Wyoming. Although the implication is that a portion of the lots described in the lease offer may be outside the corporate limits, neither the statement of reasons nor the other documents in the record provides any definitive description of the corporate limits which would permit a finding that any of the lots described lies outside the city limits.

[1] Section 1 of the Mineral Leasing Act of 1920, as amended, authorizes the Secretary of the Interior to issue leases for oil and gas deposits owned by the United States, but expressly excludes lands "in incorporated cities, towns and villages." 30 U.S.C. § 181 (1988). Departmental regulation 43 CFR 3100.0-3, promulgated thereunder, also excepts from leasing lands within incorporated cities, towns, and villages. 43 CFR 3100.0-3(a)(2)(ii). Accordingly, the Board has consistently held that, to the extent oil and gas lease offers embrace such lands, they must be rejected. D. M. Yates, 76 IBLA 208 (1983); Nova L. Dodgen, 54 IBLA 340 (1981); L. A. Walstrom, Jr., 46 IBLA 389 (1980).

Neither 30 U.S.C. § 181 (1988) nor 43 CFR 3100.0-3 makes exceptions for leases with no-surface-occupancy stipulations. The fact that slant drilling might make extraction of oil and gas deposits possible without entry upon the land does not alter the status of the land situated inside an incorporated city and, thus, change its status to leasable land. Offers to accept no-surface-occupancy stipulations are inadequate to vitiate the effect of the statute. Potts Stephenson Exploration Co., 60 IBLA 397 (1981); Ed Pendleton, 45 IBLA 398 (1980).

Further, we note that pursuant to section 5102(a) of the Federal Oil and Gas Leasing Reform Act of 1987, 30 U.S.C. § 188(b)(1)(A) (1988), lands to be leased must be offered at a competitive lease sale and such lands only become subject to noncompetitive leasing where no bids are received or the highest bid is less than the national minimum acceptable bid. See 43 CFR 3110.1(b). It appears from the facts disclosed in the BLM decision that the subject lands do not qualify for noncompetitive leasing, i.e., a competitive lease sale was held and the lands received a bid, but leasing was precluded by the fact the lands are located within the corporate limits of Greybull, Wyoming.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge

